

EXHIBIT 1

INTRODUCTION

This case arose from a Fair Political Practices Commission (“Commission”) audit of the Westly for Governor committee (“Respondent Committee”) for the period of January 1, 2005, through June 30, 2006.

Respondent Steve Westly (“Respondent Westly”) was an unsuccessful candidate for Governor of the State of California in the June 2006 primary election. At all relevant times, Respondent Committee was controlled by Respondent Westly. Also, at all relevant times, Respondent Kinde Durkee (“Respondent Durkee”) was Respondent Committee’s treasurer.

The Political Reform Act (the “Act”)¹ requires candidates, their controlled committees, and the treasurers of such committees to maintain detailed records and to report, on pre-election and semi-annual campaign statements, certain information regarding expenditures, including accrued expenses and payments to subvenders. As set forth in the counts below, Respondents violated the Act by failing to: (a) report or timely report required information for payments to subvenders; and (b) properly report expenditures, including accrued expenses.

For purposes of this Stipulation, Respondents’ violations are stated as follows:

Counts 1-13: Failure to Report Required Subvendor Information

- COUNT 1:** Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KABC – TV totaling approximately \$727,685 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 2:** Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KCAL – TV totaling approximately \$253,725 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 3:** Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KCBS – TV totaling approximately \$513,273

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.

- COUNT 4: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KCRA – TV totaling approximately \$250,283 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 5: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KGO – TV totaling approximately \$370,069 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 6: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KNBC – TV totaling approximately \$668,185 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 7: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KNTV – TV totaling approximately \$264,116 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 8: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KPIX – TV totaling approximately \$432,905 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 9: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KTLA – TV totaling approximately \$357,935 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.
- COUNT 10: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made on behalf of Respondent Westly for Governor to KTVU – TV totaling approximately \$299,306 on a pre-election campaign statement for the reporting period of March

18, 2006, through May 20, 2006, in violation of Sections 84211, subdivision (k), and 84303.

COUNT 11: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made and/or expenses incurred on behalf of Respondent Westly for Governor to Advanced Image Direct totaling approximately \$314,465 on a semi-annual campaign statement for the reporting period of May 21, 2006, through June 30, 2006, in violation of Sections 84211, subdivision (k), and 84303.

COUNT 12: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made and/or expenses incurred on behalf of Respondent Westly for Governor to Cenveo Anderson Lithograph totaling approximately \$776,301 on a semi-annual campaign statement for the reporting period of May 21, 2006, through June 30, 2006, in violation of Sections 84211, subdivision (k), and 84303.

COUNT 13: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report required subvendor information for payments made and/or expenses incurred on behalf of Respondent Westly for Governor to the United States Postal Service totaling approximately \$1,335,426 on a semi-annual campaign statement for the reporting period of May 21, 2006, through June 30, 2006, in violation of Sections 84211, subdivision (k), and 84303.

Counts 14-29: Late Reporting of Required Subvendor Information

COUNT 14: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to AdLink – TV totaling approximately \$1,897,605 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.

COUNT 15: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to KABC – TV totaling approximately \$850,578 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.

COUNT 16: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to KCAL – TV totaling approximately \$317,958 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.

- COUNT 17: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvender information for payments made on behalf of Respondent Westly for Governor to KCBS – TV totaling approximately \$1,161,313 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 18: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvender information for payments made on behalf of Respondent Westly for Governor to KCRA – TV totaling approximately \$315,880 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 19: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvender information for payments made on behalf of Respondent Westly for Governor to KFMB – TV totaling approximately \$321,916 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 20: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvender information for payments made on behalf of Respondent Westly for Governor to KGO – TV totaling approximately \$510,680 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 21: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvender information for payments made on behalf of Respondent Westly for Governor to KNBC – TV totaling approximately \$1,069,576 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 22: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvender information for payments made on behalf of Respondent Westly for Governor to KNTV – TV totaling approximately \$465,333 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 23: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvender information for payments made on behalf of Respondent Westly for Governor to KOVR – TV totaling approximately \$376,571 on a pre-election campaign statement for the reporting period of March

18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.

- COUNT 24: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to KPIX – TV totaling approximately \$892,509 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 25: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to KRON – TV totaling approximately \$257,189 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 26: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to KTLA – TV totaling approximately \$593,300 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 27: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to KTTV – TV totaling approximately \$598,060 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 28: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to KTVU – TV totaling approximately \$451,074 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.
- COUNT 29: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to timely report required subvendor information for payments made on behalf of Respondent Westly for Governor to NCC – TV totaling approximately \$1,630,989 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Sections 84200.7, subdivision (a)(2), 84211, subdivision (k), and 84303.

Counts 30 and 31: Failure to Report Accrued Expenses

COUNT 30: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report accrued expenses totaling approximately \$263,862 on a semi-annual campaign statement for the reporting period of July 1, 2005, through December 31, 2005, in violation of Section 84211, subdivisions (b), (i), and (k), and Regulation 18421.6.

COUNT 31: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report accrued expenses totaling approximately \$893,675 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Section 84211, subdivisions (b), (i), and (k), and Regulation 18421.6.

Count 32: Failure to Report Expenditures

COUNT 32: Respondents Steve Westly, Westly for Governor, and Kinde Durkee failed to report expenditures paid to Durkee & Associates totaling approximately \$20,000 on a pre-election campaign statement for the reporting period of March 18, 2006, through May 20, 2006, in violation of Section 84211, subdivisions (b), (i), and (k).

SUMMARY OF THE LAW

The violations discussed below occurred during the audit period of January 1, 2005, through June 30, 2006.² During those years, and continuing through the present, an express purpose of the Act, as set forth in Section 81002, subdivision (a), has been to ensure that receipts and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be fully informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Definition of Controlled Committee

Section 82013, subdivision (a), defines a “committee” to include any person or combination of persons who receive contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a “recipient committee.” Under Section 82016, a recipient committee which is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.” A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

² All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in 2005 and 2006.

Duty to File Campaign Statements

At the core of the Act's campaign reporting system is the requirement set forth in Section 84200, subdivision (a), that a recipient committee file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.

Also, candidates for elective state office and their controlled committees are required to file two pre-election campaign statements before an election in which the candidate is being voted upon. (Sections 84200.5 and 84200.7.) For elections held in June of an even-numbered year, pre-election statements must be filed as follows: (1) for the period ending March 17, a statement must be filed no later than March 22; and (2) for the period ending 17 days before the election, a statement must be filed no later than 12 days before the election. (Section 84200.7, subd. (a).)

Treasurer and Candidate Liability

Under Sections 81004, subdivision (b), 84100, and 84213, and Regulation 18427, subdivisions (a), (b) and (c), it is the duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer and candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee under Sections 83116.5 and 91006.

Duty to Report Expenditures, Including Subvendor Expenditures and Accrued Expenses

Section 82025 defines "expenditure" as a payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. "An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier." (Section 82025.)

Section 84211, subdivisions (b) and (i), require candidates and their controlled committees to disclose on each campaign statement: (1) the total amount of expenditures made during the period covered by the campaign statement; and (2) the total amount of expenditures made during the period covered by the campaign statement to persons who have received \$100 or more.

Pursuant to Section 84211, subdivision (k), for each person to whom an expenditure of \$100 or more has been made during the period covered by the campaign statement, the following information must be disclosed on the campaign statement: (1) the recipient's full name; (2) the recipient's street address; (3) the amount of each expenditure; and (4) the description of the consideration for which each expenditure was made.

Also, Section 84303 provides that no expenditure of \$500 or more shall be made, other than for overhead and normal operating expenses, by an agent or independent contractor,

including, but not limited to, an advertising agency, on behalf of, or for the benefit of, any committee, unless the expenditure is reported by the committee as if the expenditure were made directly by the committee. This type of information reported by a committee is commonly referred to as “subvendor information.” Regulation 18431, subdivision (a), provides that expenditures of the type that must be reported pursuant to Section 84303 include:

1. Expenditures for expert advice, expert analysis, or campaign management services, including but not limited to analysis, advice, or management services in connection with:
 - a. development of campaign strategy;
 - b. campaign management;
 - c. design or management of campaign literature or advertising;
 - d. campaign fund raising;
2. Expenditures for products or services which show how the campaign is conducted, including but not limited to expenditures for:
 - a. printed campaign literature;
 - b. advertising time or space;
 - c. campaign buttons and other campaign paraphernalia;
 - d. surveys, polls, signature gathering and door-to-door solicitation of voters;
 - e. facilities, invitations, or entertainment for fundraising events;
 - f. postage for campaign mailings; and
3. Expenditures to printers of mass mailings.

Section 84211, subdivision (k)(6), requires the disclosure of such subvendor information as part of the contents of any campaign statement required to be filed by the committee. Specifically, the following information must be provided: (1) the subvendor’s full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subd. (k)(1)-(4) and (6).)

Additionally, accrued expenses (excluding loans) owed by a recipient committee which remain outstanding shall be reported on each campaign statement until extinguished. (Regulation 18421.6, subd. (a).) Such accrued expenses must be reported as of the date on which the goods or services are received, except that any obligation incurred for a regularly recurring administrative overhead expense (e.g., rent, utilities, phones, campaign workers’ salary) need not be reported as an accrued expense before the payment due date. (Regulation 18421.6, subd. (b).)

SUMMARY OF THE FACTS

This case arose from a Commission audit of Respondent Committee for the period of January 1, 2005, through June 30, 2006.

Respondent Westly was an unsuccessful candidate for Governor of the State of California in the June 2006 primary election.

Respondent Committee first filed as a recipient committee under the Act about April 2005. At all relevant times, Respondent Committee was controlled by Respondent Westly. Also, at all relevant times, Respondent Durkee was Respondent Committee's treasurer.

For the audit period, Respondent Committee's reported receipts, including nonmonetary contributions, totaled approximately \$45,633,043, and Respondent Committee's reported expenditures totaled approximately \$44,974,376.

Counts 1-29: Failure to Report or Timely Report Required Subvendor Information

In this case, Counts 1 through 29 pertain to payments that were made by vendors to subvendors on behalf of Respondent Committee. These payments total approximately \$18,274,205, and they should have been reported as subvendor payments pursuant to Sections 84211, subdivision (k), and 84303, as well as Regulation 18431. All of these payments were for television advertising, except for Counts 11 through 13, which were for campaign mailers.

In the case of Counts 1 through 10, the required subvendor information was required to be reported before the June 2006 primary election, but the information was never reported. In the case of Counts 11 through 13, the required subvendor information was required to be reported after the election, by July 31, 2006, but the information was never reported. In the case of Counts 14 through 29, the required subvendor information was required to be reported before the election, but it was not reported until a few weeks after the election.

By failing to report or timely report required information regarding the above-described payments to subvendors, Respondents committed 29 violations of Sections 84211, subdivision (k), and Section 84303.

Counts 30 and 31: Failure to Report Accrued Expenses

Count 30 pertains to accrued expenses for consulting fees and miscellaneous charges totaling approximately \$263,862, which were owed to Doak, Carrier, O'Donnell, Wilkinson, Goldman & Associates ("Doak"). The expenses first accrued during the reporting period ending December 31, 2005. However, nearly all of the expenses went unreported until the period ending March 17, 2006, and the rest went unreported until the period ending May 20, 2006. The expenses were paid in March and April of 2006.

Count 31 pertains to accrued expenses for consulting fees, campaign mailers, and miscellaneous charges totaling approximately \$893,675, which were owed to Doak and Centaur North Strategic Communications. The expenses first accrued during the reporting period ending May 20, 2006. However, approximately 89% of the expenses went unreported until the period ending June 30, 2006, and the rest were never reported. The expenses were paid at various points in time between May and December of 2006.

By failing to report the above-described accrued expenses during the reporting periods when the expenses first accrued, Respondents committed two violations of Section 84211, subdivisions (b), (i), and (k), and Regulation 18421.6.

Count 32: Failure to Report Expenditures

Count 32 pertains to Respondents' failure to report expenditures totaling approximately \$20,000 for the reporting period ending May 20, 2006. The expenditures were paid to Respondent Durkee's company, Durkee & Associates. At the time, Respondent Durkee also was the treasurer of Respondent Committee.

By failing to report the above-described expenditures, Respondents committed one violation of Section 84211, subdivisions (b), (i), and (k).

DETERMINATION OF PENALTY AMOUNT

This matter consists of 32 counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count, for a total maximum penalty of \$160,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. This requires consideration of aggravating and mitigating factors, as follows:

Aggravating Factors Applicable to All Counts

Respondents Westly and Durkee had a great deal of prior experience with the Act and they have a history with the Enforcement Division of the Commission. Respondent Westly has received at least one warning letter from the Enforcement Division, and Respondent Durkee has been prosecuted by the Enforcement Division on two prior occasions.

Mitigating Factors Applicable to All Counts

Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission in all phases of the audit and by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held.

Determination of Penalty Amount as to Counts 1-29

Failure to Report or Timely Report Required Subvendor Information

The typical administrative penalty for failure to report or timely report subvendor information has varied depending upon the unique facts of each case, including the relative size of the subvendor payments in question and whether the information should have been reported before or after the election. In this case, the following aggravating and mitigating factors are present, in addition to the factors applicable to all counts:

Additional Aggravating Factors Applicable to Counts 1-29

Counts 1 through 29 pertain to subvendor payments totaling approximately \$18,274,205, which is relatively high considering that this amount comprises approximately 41% of all reported expenditures for the audit period.

In the case of Counts 1 through 10, the required subvendor information was required to be reported before the June 2006 primary election, but the information was never reported. In the case of Counts 11 through 13, although the required subvendor information was not required to be reported until after the election (by July 31, 2006), the information was never reported. In the case of Counts 14 through 29, the required subvendor information was required to be reported before the election, but it was not reported until a few weeks after the election.

Also, with respect to Counts 1, 12 through 15, 17, 21, 24, and 29, the relative size of the subvendor payments in question is high when compared to the amounts in question for the other counts.

Additional Mitigating Factors Applicable to Counts 1-29

Respondent Durkee maintains that she repeatedly sought to obtain the missing subvendor information from the vendors in question, but the information was not provided to her in time.

In the case of Counts 11 through 13, even though the required subvendor information was never reported, it was not required to be reported until after the election (by July 31, 2006), which means the public was not deprived of pre-election information. Also, Counts 11 through 13 pertain to mailings for which the vendor and gross cost were timely disclosed—even though the required subvendor information was not disclosed.

In the case of Counts 14 through 29, the required subvendor information was eventually reported in an amendment filed approximately five weeks late.

Appropriate Penalty as to Counts 1-29

The foregoing factors, including the factors applicable to all counts, justify an administrative penalty per count, for Counts 1 through 29, as follows:

Counts	Amount Per Count
1	\$4,000
2-10	\$3,500
11	\$3,000
12-15	\$3,500
16	\$3,000
17	\$3,500
18-20	\$3,000
21	\$3,500
22-23	\$3,000

Counts	Amount Per Count
24	\$3,500
25-28	\$3,000
29	\$3,500

Determination of Penalty Amount as to Counts 30 and 31

Failure to Report Accrued Expenses

The typical administrative penalty for violations involving the failure to report accrued expenses has varied depending upon the unique facts of each case, including the relative size of the accrued expenses. In this case, the following aggravating and mitigating factors are present, in addition to the factors applicable to all counts:

Additional Aggravating Factors Applicable to Counts 30 and 31

The accrued expenses in question should have been reported before the election, but they were not.

With respect to Count 31, the relative amount of accrued expenses at issue is high when compared to the amount at issue for Count 30.

Additional Mitigating Factors Applicable to Counts 30 and 31

The accrued expenses in question total approximately \$1,157,537. This amount is relatively low when compared to Respondents' reported expenditures (for the audit period) of approximately \$44,974,376.

Appropriate Penalty as to Counts 30 and 31

The foregoing factors, including the factors applicable to all counts, justify an administrative penalty in the amount of \$2,500 for Count 30 and \$3,000 for Count 31.

Determination of Penalty Amount as to Count 32

Failure to Report Expenditures

The typical administrative penalty for expenditure reporting violations (not involving contributions and accrued expenses) has varied depending upon the unique facts of each case, including the relative size of the expenditures in question. In this case, the following aggravating and mitigating factors are present, in addition to the factors applicable to all counts:

Additional Aggravating Factors Applicable to Count 32

The expenditures in question should have been reported before the election, but they were not.

With respect to the expenditures in question, the payee was Durkee & Associates, and considering that Respondent Durkee was the treasurer of Respondent Committee, reporting of this expenditure should not have been overlooked.

Additional Mitigating Factors Applicable to Count 32

The expenditures in question total approximately \$20,000, which is relatively low when compared to Respondents' reported expenditures (for the audit period) of approximately \$44,974,376.

Appropriate Penalty as to Count 32

The foregoing factors, including the factors applicable to all counts, justify an administrative penalty in the amount of \$2,500 for Count 32.

CONCLUSION

Based upon the foregoing facts and circumstances, a penalty against Respondents Steve Westly, Westly for Governor, and Kinde Durkee in the agreed upon amount of \$104,500 is justified.